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PUBLIC UTILITIES COMMISSION

CONSUMER ASSISTANCE DIVISION BULLETIN 89-8

DATE: November 14, 1989

TO: All Electric and Gas Utilities

FROM: Barbara R. Alexander, Director, Consumer Assistance Division BA

RE: Chapter 810, Section 17 (J): Disconnection of Customers
Not Eligible Under the Winter Rule

A utility has asked whether Section 17(J) of the Winter Disconnection Rule allows the disconnection of certain residential customers without the permission of the Consumer Assistance Division (CAD) during the winter period. Under the restrictions set forth in Part J, the answer is "yes."

Section 17(J), All Other Customers, provides:

"If the customer does not claim eligibility, is declared ineligible by the Consumer Assistance Division pursuant to Part F, or is otherwise not entitled to enter into a Special Payment Arrangement, the utility shall attempt to enter into a Regular Payment Arrangement with that customer for all bills the nonpayment of which would result in disconnection of the customer's service during the Winter Disconnection Period, the utility must act in accordance with Part D of Section 17."

This provision was a part of the Winter Disconnection Rule adopted in 1980 (Order, November 10, 1980, Docket No. 80-155). It has been retained in the current rule essentially unchanged.

The basic purpose of the rule is to give protection from disconnection to those unable to pay, i.e., "eligible customers", as that term is defined in Part B(5). The rule has never afforded those same protections to customers who are not eligible. For example, Part I references only "eligible customers" in describing

the procedural steps of requesting permission to disconnect. There is a common misperception that no residential customer can be disconnected during the winter period without the permission of the CAD. The impact of Part J seems to have been overlooked.

There are several important restrictions on the use of Part J:

(1) All residential customers who receive a disconnection notice must be orally solicited to declare eligibility upon personal contact according to Part E. If the customer refuses the offer, or is found ineligible by the CAD, or is otherwise ineligible (see Part H(5) (a) discussed below), Part J is applicable and the utility must attempt to negotiate a regular payment arrangement.

(2) If the customer and the utility cannot agree on the payment terms, the utility should follow Sections 6 (payment arrangements) and 9 (disconnection notice) of Chapter 810. The utility must follow the regular procedures of Sections 6 and 13 in the negotiation of payment terms. Unlike disputes concerning the negotiation of Special Payment Arrangements (SPAs) in Part H(3), however, the burden is on the Part J customer to exercise their right of appeal to the CAD.

(3) If a customer breaks a regular arrangement in the winter period, the utility must follow the provisions of Part D concerning attempt at personal contact. Eligibility must again be determined. If the customer is not eligible, the utility has the discretion to renegotiate or not, as the circumstances warrant.

(4) Certain customers are unable to pay according to the income guidelines, but are still not eligible because they have failed to complete the terms of a prior SPA by November 1 (see Part H(5) (a)). These are the so-called "rollover customers." The utility has discretion as to whether these customers are subject to disconnection for broken payment arrangements during the winter period. While the utility does not need the permission of the CAD to disconnect these customers, three important caveats apply:

a) Customers who have a rollover arrangement should know that their failure to complete the prior SPA and acceptance of the rollover arrangement waives their right to an SPA this winter. Utilities who offer rollover arrangements without explaining the change in disconnection status may mislead the customer.

b) Rollover customers regain their eligibility at the time the previous winter SPA is paid in full.

c) Utilities must follow the dispute resolution procedures of Section 13 of Chapter 810 at all times and for all customers.

(5) The determination **as** to whether Part J is applicable is not the name given to the payment arrangement, but the eligibility status of the customer. If an otherwise eligible customer chooses a regular arrangement (current bill plus some portion of arrears), the protections of Part I (permission to disconnect) should be followed.

Small Utilities

Small utilities are not required, according to Part O, to solicit eligibility or offer SPAs. Therefore, Part O(3) requires the permission of the CAD before disconnecting "any customer." However, a small utility may seek an exemption to apply Part I on the grounds the eligibility is solicited and SPAs offered. Part Q describes the procedures for filing an exemption request. The Staff is prepared to expedite requests that meet these requirements.

Summary

Large utilities have the option of disconnection without the permission of the CAD during the winter period if the customer does not claim eligibility, is declared ineligible by the CAD (Part F), or is otherwise not entitled to enter into an SPA (did not complete last winter's SPA). Permission to disconnect is still required for customers that are eligible or those with whom the utility has not had personal contact. Small utilities still need permission to disconnect for any residential customer unless the Commission grants an exemption.

BA/kp